



NEWS RELEASE

Administrative Office of the U.S. Courts

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Judicial Conference Asks Congress to Address Areas of Concern in Bankruptcy Reform Bill.

A representative of the Judicial Conference of the United States today told the Senate Judiciary Committee the Conference strongly opposes a provision of S. 220, the Bankruptcy Reform Act, that would allow direct appeals of bankruptcy cases to the U.S. Courts of Appeals, and which has the potential to increase appellate court workload by 400 percent.

Chief Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit also said the Conference supports the bill's creation of new bankruptcy judgeships, although the number of judgeships proposed in the bill will not meet the Judiciary's needs. Other areas of concern raised by the bill are re-allocation of revenues generated by filing fees, mandatory data collection, maintaining income tax returns and the amendment of bankruptcy rules.

Direct Appeals

One of the provisions of S. 220 would provide that all bankruptcy court orders appealed to the district court would become orders of the district court 31 days after such appeal is filed, unless the district court decides the case within 30 days or extends the time period for decision. The case would then be immediately appealable to the courts of appeals. Speaking in opposition to section 1235 of the bill regarding expedited appeal of bankruptcy cases, Judge Becker said, "Functionally, this radical change will result in all appeals from bankruptcy courts being routed directly to the U.S. Court of Appeals, depositing upwards of three thousand new cases per year on these courts." Judge Becker noted that the courts of appeals are already overworked and strained and that they will simply be unable to absorb such an unprecedented additional caseload, which will increase the docket of some circuits by 10 to 20 percent. Judge Becker also noted that the provision would likely have a deleterious and possibly "withering away" effect on the bankruptcy appellate panels of the First, Sixth, Ninth and other circuits because the provision will enable counsel to bypass the BAPS and go right to the court of appeals.

Judge Becker acknowledged that the unitary appeal provision of the bill had a certain surface attraction, but then explained how its benefits are illusory. First he noted potential legal obstacles to its implementation insofar as the Department of Justice has long maintained that in the absence of meaningful review by the district court, direct appeal to the court of appeals presents constitutional problems under *Marathon*. Taking up the claim that direct appeal is needed

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so as to create more precedent in the bankruptcy area so as to reduce litigation, Judge Becker observed: (1) that because of the pressures on the courts of appeals, most court of appeals opinions in this day and age are legended “non precedential”; (2) that most opinions in bankruptcy cases tend to be fact-bound, thereby creating little precedent; and (3) in his experience more precedent creates more litigation not less.

Taking up the contention that a unitary appeal process will be less costly, Judge Becker pointed out that appeals to the U.S. Courts of Appeals are far more expensive than appeals to the district courts where the procedures are less formal. He noted that 80% of the bankruptcy appeals never go beyond the district court and hence that requiring appeals to the courts of appeals will make the process more, not less expensive. He commended the district courts on the excellent job that they are doing in disposing of bankruptcy appeals efficiently. Finally, in terms of the alleged time problem, Judge Becker observed that not only will no time be saved for the 80% of cases which fall out at the district court level, but that the 30-day extension of time provided in the bill will simply result in further delay.

Acknowledging that there are cases where the two-tiered appeal is problematic because of the urgent need for precedent in a given area or the concern that delay will adversely impact the reorganization, Judge Becker discussed the proposal of the Judicial Conference for immediate appeal of such cases to the courts of appeals upon certification by the district court or BAP. Judge Becker urged the Committee to substitute this provision for ‘ 1235.

Judgeships

S. 220 would create 23 new temporary bankruptcy judgeships and extend certain existing temporary judgeships. Citing the Judicial Conference’s recommendation for the addition of 13 permanent bankruptcy judgeships and 12 temporary judgeships, Judge Becker said the current bill “falls somewhat short of the needs of the Judiciary.” The Conference also recommends the temporary judgeships in the District of Puerto Rico, the Northern District of Alabama, and the District of Delaware be converted to permanent positions, and that the temporary judgeship in the Eastern District of Tennessee be extended for a period of five years. A lapsed judgeship in the District of South Carolina needs to be re-authorized by including it among the new judgeships.

“Additional bankruptcy judgeships have not been authorized by Congress since 1992 when 35 new judgeships were approved,” said Judge Becker. “In response to a substantial increase in case filings, the Judicial Conference has made recommendations to Congress for additional bankruptcy judgeships in 1993, 1995, 1997 and 1999. These judgeships have not as yet been authorized by Congress.” Judge Becker told the Committee that bankruptcy filings continue at very high levels and well over a million cases are pending in the courts. “There remains a dire need for more judicial resources to handle the burgeoning judicial workload,” he said.

Income Tax Returns, Data Collection, Filing Fees, and Bankruptcy Rules

The Judicial Conference opposes provisions in S. 220 that would re-allocate revenues generated by filing fees from the Judiciary to the U.S. Trustee program at a cost to the Judiciary of more than \$25 million over the next five years. These funds, Judge Becker told the Committee, are required by the Judiciary to meet its statutory responsibilities.

The Conference also opposes provisions of the bill that direct the Judiciary to collect and report financial data of consumer debtors in consumer bankruptcy cases. This data, filed in many cases without the assistance of a lawyer, is of questionable reliability and a superior approach in the view of the Conference is to append the responsibility to the U.S. Trustees to conduct audits under this bill.

The Conference takes the position that the bankruptcy courts should not be required to maintain tax returns filed by debtors, as would be required under S. 220. A separate filing system for returns would not only be costly to undertake, it would best, in the opinion of the Conference, be more appropriately assigned to the U.S. Trustees, who are responsible for supervising estates and approving distributions to creditors.

Finally, provisions directing the Judicial Conference's Advisory Committee on Bankruptcy Rules to amend bankruptcy rules are unnecessary because a process to identify and prescribe any needed amendments to rules and forms is currently in place, under the Rules Enabling Act.

The full text of Chief Judge Edward Becker's testimony on S. 220 is available [here](#).

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